

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

TRACEY FERGERSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 2:13-CV-376-WHA
	)	
UNITED STATES OF AMERICA,	)	(wo)
	)	
Defendant.	)	

**ORDER**

This case is before the court on the Recommendation of the Magistrate Judge (Doc. #48), and the Plaintiff's Objection thereto. (Doc. #49).

Upon an independent evaluation and *de novo* review of this case, the court finds the objection to be without merit.

The Plaintiff, Ferguson, objects to the Magistrate Judge's recommendation construing her "Rule 60 motion" as a successive 28 U.S.C. § 2255 motion. In her motion, however, she re-argues the claim which she asserted in her first § 2255 motion that her trial counsel was ineffective for failing to raise an Ex Post Facto Clause argument concerning the version of the Sentencing Guidelines used at sentencing. In her objections to the Recommendation, Ferguson says she is not trying to re-litigate the merits of her ineffective assistance of counsel claim, but rather is taking issue with the denial of that claim without an evidentiary hearing. Her argument is still an attempt to reargue a claim that was denied on the merits, however. The purpose of an evidentiary hearing would be to present further argument and evidence about a claim upon which this court has already made a merits ruling. Because Ferguson is still arguing the merits of her ineffective assistance of counsel claim, her "Rule 60 motion" is properly construed as a

successive § 2255 motion filed without Eleventh Circuit authorization. *See Soto-Herrera v. United States*, No. 95-00079-KD, 2013 WL 1788499, at \*4-5 (S.D. Ala. Apr. 26, 2013).

Accordingly, it is hereby ORDERED as follows:

1. The Plaintiff's Objection is OVERRULED.
2. The court ADOPTS the Recommendation of the Magistrate Judge.
3. The case is DISMISSED because the motion constitutes a successive motion for relief under 28 U.S.C. §2255 and Ferguson has failed to obtain the requisite order from the Eleventh Circuit Court of Appeals authorizing this court to consider the successive §2255 motion.

A Judgment will be entered in accordance with this Order.

Done this 4th day of May, 2017.

/s/ W. Harold Albritton  
W. HAROLD ALBRITTON  
SENIOR UNITED STATES DISTRICT JUDGE